

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Before the Board of Patent Appeals and Interferences**

Applicant : Amy M. Manetta  
Serial No. : 09/805,970  
Filed : March 14, 2001  
For : SYSTEM AND METHOD FOR PROCESSING VENTILATOR  
INFORMATION  
Examiner : Truc T. Chuong  
Art Unit : 2179

**REPLY BRIEF**

May It Please The Honorable Board:

This is Appellants Reply Brief filed in response to the Examiners Answer dated February 9, 2006. No fee is believed due with this Reply Brief. However, should a fee be due, please charge the fee to Deposit Account 50-2828.

Applicant respectfully submits that this response is timely.

### **I. STATUS OF THE CLAIMS**

Claims 1, 2, 4-13 and 15 - 22 are rejected and the rejection of claims 1, 2, 4-13 and 15 – 22 are appealed.

### **II. STATUS OF AMENDMENTS**

All amendments were entered and are reflected in the claims included in Appendix I.

### **III. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1 and 12 are rejected under 35 USC 102(e) as being anticipated by Reuss et al. (U.S. Pat. No. 6,406,426).

Claims 2, 4-11, 13 and 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuss et al. (U.S. Pat. No. 6,406,426) in view of Shulman et al. (US 2001/0030664).

### **IV. ARGUMENTS**

For the reasons presented in the Appeal Brief filed on October 19, 2006 which are incorporated by reference herein, and for the reasons presented below, Reuss when taken alone or in combination with Shulman does not anticipate or make the present claimed invention unpatentable. Thus, reversal of the Final Rejection (hereinafter termed “rejection”) of claims 1, 2, 4-13 and 15-22 under 35 U.S.C. §§ 102(e) and 103(a) is respectfully requested.

#### **Rejection of Claims 1 and 12 under 35 USC 102(e)** **over Reuss et al. (U.S. Patent No. 6,406,426)**

Reversal of the rejection of claims 1 and 12 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,406,426 issued to Reuss et al. is respectfully requested

because the rejection makes crucial errors in interpreting the cited reference. The rejection erroneously states that claims 1 and 12 are anticipated by Reuss. The following remarks are applicable to claims 1 and 12 and respond directly to the Examiner's comments on pages 6 – 13 of the Answer which collectively discuss Applicant's arguments for claims 1 and 12.

### CLAIMS 1 and 12

The present invention recites an internet compatible system for displaying medical information derived from a plurality of sources. The system includes a communication network for acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command. The system further includes a device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings. A display generator initiates generation of data representing a display of the prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings. Claims 1 and 12 include similar features and are considered patentable for reasons presented in the Appeal Brief of October 19, 2006 and for the additional reasons presented below.

Contrary to the assertions made in the Final Rejection and the Examiner's Answer, Applicant respectfully submits that the present claimed invention is NOT anticipated by Reuss because Reuss neither discloses nor suggests each and every feature claimed in claims 1 and 12.

The Answer on page 6, alleges that “ventilating and other medical information/status can be controlled/retrieved from different communication devices which are capable of sending and getting priority communicating data throughout the wire area network/internet by using wire/wireless connections such as laptops, PDAs and personal computers” and thus anticipates the claimed invention. Applicant respectfully disagrees. Applicant is unsure what is meant by the phrase “getting priority communicating data” and will treat it as meaning having “prioritized data communicating through a network”. However, even in view of that interpretation applied to the Examiner’s statement, Reuss still neither discloses nor suggests the claimed arrangement.

The Answer erroneously cites column 4, lines 8 – 22, column 9, lines 25 – 47 and column 15, lines 15 – 32, as providing sufficient 35 USC 112 compliant enabling disclosure of the claimed invention. Applicant respectfully disagrees. Specifically, column 4, lines 8 – 22 disclose transmission of an alert signal to an alert system which subsequently notifies a plurality of different caregivers that an alert condition exists. The alert signal transmitted by Reuss is not equivalent to the “acquired ventilator parameters and settings” which are “prioritized...for display in a desired order” and which have “an attribute [allocated to them] to distinguish changed ventilator parameters and settings” as in the claimed arrangement. The claimed invention defines settings as objects used for controlling a ventilator (see Application, page 1) and parameters as objects that are monitored by the device as defined by the settings (see Application page 1). While Reuss acquires therapy status data, the data is acquired by the patient monitor. The patient monitor (or other device) of Reuss does NOT prioritize the therapy data. The Reuss system utilizes the alarm system to transmit alert signal to caregivers having remote devices. However, the alert signal in Reuss implies that a certain threshold has

been crossed and care is required for the particular patient. Reuss makes clear the differentiation between “therapy status data” which is controlled and monitored by the patient monitor and “alert condition data” which is data indicating that a certain condition has been met (See Reuss, column 7, lines 27-45 for therapy status data and column 7, lines 45-54 for alert condition data). The alert signal may be received by a caregiver having a PDA but the information received is not “prioritized revived ventilator parameters and settings” displayed in a desired order which include an “attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention. However, Reuss neither discloses nor suggests that the PDA or remote device receive or prioritize “ventilator parameters and settings” as in the claimed invention. Similarly, column 9, lines 25 – 47 also neither disclose nor suggest the claimed feature. Instead, the cited section of Reuss merely discloses the use by a caregiver of a remote device that can be used to acknowledged that an alert was received and end the alert condition. Again, Reuss in the cited section (or elsewhere) fails to disclose or suggest the claimed feature.

The Answer further erroneously cites column 8, lines 13 -29 in combination with the above cited sections to suggest that the claimed arrangement is anticipated. Applicant respectfully submits that the Examiner is improperly using different and independent devices disclosed by Reuss, each having a different and specific purpose set forth therein, to anticipate the claimed invention. Column 8, lines 13 – 29 describe the patient monitor which allows a user to set and monitor therapy status data and includes a display for displaying the data being monitored and further to optionally display alert condition data indicating that an alert condition exists. There is nothing in this section Reuss or elsewhere that discloses or suggests that the “patient monitor” of Reuss is equivalent to “a device for prioritizing received

ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention.

The Answer, on page 7, asserts that “the communications between the remote control devices and medical systems are bi-directional communications, which allow for remote control of therapy delivery and physiological monitoring parameters from the external devices”. Applicant respectfully disagrees with the characterization by the Examiner of the remote access devices of Reuss. Contrary to the assertion made in the Answer, Reuss clearly sets forth the intention and operation of the remote devices in column 9, lines 16 – 47. No where in that section does Reuss disclose that the devices are able to remotely control therapy delivery and monitoring parameters as asserted in the Answer. Rather, Reuss states that the “remote devices 42 are carried by caregivers for purposes of receiving alert signals, requesting and receiving medical data and generally tracking patient performance” (col. 9, lines 18 – 22). Therefore, Applicant respectfully submits that similarly to other sections of Reuss, the Examiner mischaracterizes and misinterprets the Reuss system. In view of this misinterpretation, and lack of enabling disclosure provided in Reuss of the present claimed invention, it is respectfully submitted that Reuss does not anticipate the present claimed invention.

Additionally, in response to Applicant’s arguments presented in the Appeal Brief, the Answer further misinterprets the Reuss system and draws erroneous conclusions regarding the anticipation by Reuss of the claimed arrangement. On page 8, the Answer cites column 8, lines 13 – 29 as anticipating the “device for prioritizing received ventilator parameters” of the present invention. However, as discussed above, this cited section merely describes the patient

monitor which fails to include a feature for “prioritizing received ventilator parameters and settings” as in the claimed invention. Instead, the patient monitor merely monitors and enables a user to select parameters to be monitored. This is fundamentally different from the claimed system which advantageously provides users with an easy and recognizable display for analyzing the received parameters and settings. “This feature allows the user to easily and efficiently customize his or her data viewing according to his or her needs” (Specification page 9, lines 23-24). Reuss provides a separate and distinct monitor and warning system and is not concerned with the efficient and “prioritized” display of “ventilator parameters and settings” as in the present claimed invention.

Applicant respectfully submits that the conclusion drawn by the Answer on page 9 is wholly erroneous and without factual basis or support found in Reuss. The Answer states that “[i]t clearly means that the system of Reuss is no just a maintenance activity, and it can be remotely used in monitoring, controlling, and setting/adjusting the parameters on a therapeutic device 12 located at the patient side”. Applicant agrees, Reuss is not just a maintenance system and performs a plurality of monitoring and notification functions intended to improve patient care and response to patient needs. However, as discussed above, the Examiner fundamentally misinterprets both the Reuss reference and the Applicants arguments presented in the Appeal Brief. With respect to Applicants arguments, the Appeal Brief asserts that column 15, lines 4 - 8, discloses a maintenance activity for cleaning old messages out from a memory in the alert system. Applicant does NOT assert that Reuss “just a maintenance activity” as implied by the Answer. As discussed above and in the Appeal Brief, the alert system generates and transmits messages of alert conditions to remote devices. The section cited by the Final Rejection merely discusses clearing out a memory of a remote device when resources are determined to be too

low. This is NOT equivalent to “prioritizing received ventilator parameters and settings for display in a desired order” as in the claimed invention. As discussed above, the alert condition data which is transmitted via messages is NOT equivalent to the therapy status data monitored by the patient monitor 12 of Reuss. Moreover, neither of these operations described in Reuss anticipates “a device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings” as in the present claimed invention.

The Answer, on page 9 further erroneously mis-states the operation of the Reuss system. Specifically, Answer states “Each of the messages **always** carries the priority level of the medical alert associated with it” and cites column 15, lines 5-7 in support thereof. Applicant respectfully submits that the Examiner is reading a feature into Reuss which is not described therein. Rather, the cited section refers to how messages are selected for deletion and states “the selection of messages is based on age of the message, whether it has been read, and the priority of a medical alert (**if any**) associated with it”. This does not support the conclusion drawn by the Examiner with respect to “always carrying a priority level”. Moreover, if a priority level exists, it is an alert priority level determined by alert condition data and is NOT “prioritize[ed] received ventilator parameters and settings for display in a desired order” as in the claimed invention. Thus, the conclusion that “Reuss clearly shows all medical data from the patient are listed based on the priority of the medical alert associated with it” is similarly erroneous. Reuss, in the cited section or elsewhere, fails to provide any enabling disclosure that the “received ventilator parameters and settings are displayed in a desired order”. The removal of messages from a memory as in Reuss has nothing to do with the prioritized display of data as in the claimed invention.



The Answer further asserts that the Message Server Task as described on page 9 and 10 of the Answer further anticipates the claimed “device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings”. Applicant respectfully disagrees and incorporates herein the remarks of the Appeal Brief on pages 8 – 10. The messages transmitted across the Reuss system are not “prioritized” for **display** in a desired order. Rather, the data is **deleted** in a specific order using the Message Server Task as stated in column 15, lines 5 – 7 of Reuss. This is a fundamentally different operation than the one performed by present claimed “device for prioritizing...and allocating”. The claimed device advantageously displays parameters and settings in manner to allow a view to easily see any changes in the received and prioritized parameters and settings. Contrary to the claimed invention, Reuss deletes message data from a memory of a device and uses certain factors (e.g. age, response level, etc) to determine if message data should be deleted. Reuss does not prioritize messages for display. Rather, Reuss determines which messages can (and should) be removed. Reuss DOES NOT mention how or where the non-removed messages are displayed and certainly does not disclose or suggest that they are prioritized for display or have an attribute allocated thereto indicating a change as in the claimed arrangement. The Message Server Task of Reuss is merely concerned with managing system resources and not at all concerned with providing efficient display of “prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings” as in the claimed invention.

Additionally, as discussed in the Appeal Brief, Reuss fails to disclose or suggest “allocating an attribute to distinguish changed ventilator parameters and settings” as in the

present claimed invention. There is no 35 USC 112 compliant enabling disclosure of this feature contained in Reuss. Consequently, it is respectfully requested that the rejection under 35 USC 102(b) be withdrawn.

Therefore, in view of the remarks presented above and the remarks provided in the Appeal Brief, Applicant respectfully submits that the Reuss fails to provide any 35 USC 112 compliant enabling disclosure of each feature claimed in claims 1 and 12. Thus, it is respectfully submitted that this rejection has been satisfied and should be withdrawn.

**Rejection of Claims 2, 4-11, 13 and 15-22 under 35 USC 103(a) over Reuss et al. (U.S. Patent No. 6,406,426) in view of Shulman et al. (U.S. 2001/0030664)**

Reversal of the rejection of claims 2, 4-11, 13 and 15-22 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,406,426 issued to Reuss et al. in view U.S. 2001/0030664 issued to Shulman is respectfully requested because the rejection makes crucial errors in interpreting the cited references. For the reasons presented in the Appeal Brief of October 19, 2006 which are incorporated herein by reference and for the reasons presented below, it is respectfully submitted that the rejection erroneously states that claims 2, 4-11, 13 and 15-22 are made unpatentable by Reuss in view of Shulman.

**CLAIMS 2, 4-11, 13 and 15-22**

Applicant respectfully submits that these claims are only grouped together for the purpose of this Reply Brief in order to respond the generalized comments made by the Examiner on page 11 and 12 of the Answer. Applicant further respectfully submits that the individual arguments for the claims presented in the Appeal Brief remain applicable and this

grouping should not be construed to mean that these claims stand or fall together. The claims argued individually in the Appeal Brief are considered to be patentable for those reasons set forth therein.

The Answer on page 12 states that Reuss teaches a system that sends, sets and receives parameters and settings (attributes) which may be controlled by a remote device. Applicant further disagrees with the Examiner's characterization of "settings" as attributes. This characterization is entirely inaccurate. As described above the "settings" of the ventilator as defined in present specification "control the operation of the ventilator" (page 1). These are not attributes as claimed in the present invention. Rather the claimed "attributes" are allocated to indicate a **change** in "ventilator parameters and settings". The Examiner continues with the mischaracterization of the claimed invention which he states that Reuss describes the present claimed because Reuss "controls, sets and changes parameters" of a monitor. Reuss is not at all equivalent, in structure or operation, to the present claimed invention. Rather the claimed invention is a "system for **displaying medical information**". The claimed system acquires "ventilator parameters and settings" and includes a "device for prioritizing the received ventilator parameters and settings for **display** in a desired order and **allocating an attribute to distinguish changed ventilator parameters**". The claimed system then displays these prioritized parameters and settings along with any attributes allocated thereto. Reuss fails to provide a device able to operate in a manner equivalent to the claimed invention.

The Answer further erroneously asserts that the only feature of the claimed arrangement not disclosed by Reuss is a different color attribute which is taught by Shulman. The Answer states that Shulman discloses an icon for showing network status and that the icon

is displayed in response to received information. However, network status information is non-analogous art and an icon indicating such network status information is not able to be properly combined with a therapy monitoring system such as the one disclosed by Reuss. Schulman (with Reuss) is not concerned with the changing of ventilator parameters and settings and neither discloses nor suggests displaying the attribute in a different color when a change in ventilator parameters and settings is determined, as in the present claimed invention.

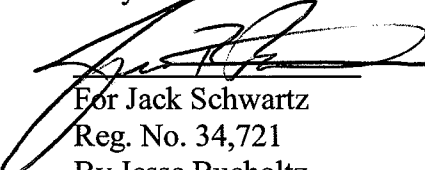
Therefore, in view of the remarks presented above and the remarks provided in the Appeal Brief, Applicant respectfully submits that the Reuss (with Shulman) fails to provide any 35 USC 112 compliant enabling disclosure of each feature claimed in claims 1 and 12. As claims 2 and 4-11 are dependent on claim 1 and claims 13 and 15-22 are dependent on claim 12, it is respectfully submitted that claims 2, 4-11, 13 and 15-22 are not made unpatentable by Reuss (with Shulman). Thus, it is respectfully submitted that this rejection has been satisfied and should be withdrawn.

### VIII CONCLUSION

For the reasons presented above and in supplement to the reasons presented in the Appeal Brief of October 19, 2006, it is respectfully submitted that Reuss with Shulman, alone or in combination neither discloses nor suggests the features claimed in claims 1 and 12 of the present invention.

Accordingly it is respectfully submitted that the rejection of Claims 1, 2, 4-13 and 15 – 22 should be reversed.

Respectfully submitted,  
Amy Manetta

A handwritten signature in black ink, appearing to read "Jesse Bucholtz", is written over the typed name.

For Jack Schwartz  
Reg. No. 34,721  
By Jesse Bucholtz  
Reg. No. 55,027

Jack Schwartz & Associates, PLLC  
1350 Broadway, Suite 1510  
New York, NY 10018  
Tel: (212) 971-0416  
Fax: (212) 971-0417

**APPENDIX I - APPEALED CLAIMS**

1. (Previously Presented) An internet compatible system for displaying medical information derived from a plurality of sources, comprising:

- a communication network for acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command;
- a device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings; and
- a display generator for initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings.

2. (Original) The system of claim 1 wherein the attribute is a different color.

3. (Cancelled)

4. (Previously Presented) The system of claim 2 wherein the display generator generates data representing a window for displaying said ordered ventilator parameters and settings, in a first window.

5. (Previously Presented) The system of claim 4 wherein the display generator comprises an internet browser.

6. (Original) The system of claim 4 wherein the ventilator parameters and settings are displayed so that the changed ventilator parameters and changed ventilator settings are displayed in the different color.

7. (Previously Presented) The system of claim 2 wherein the device, in response to the user command, acquires a new set of ventilator parameters and settings.

8. (Previously Presented) The system of claim 2 wherein the device prioritizes the received ventilation unit parameters and settings for display in a desired order in response to a second user command.

9. (Previously Presented) The system of claim 8 wherein the second user command comprises selection of a filtered list.

10. (Previously Presented) The system of claim 8 wherein the second user command comprises creation of a set of values for selected parameters and settings.

11. (Original) The system of claim 4 wherein said menu generator comprises a user selection for selecting anyone of the plurality of sources.

12. (Previously Presented) An internet compatible method for displaying medical information derived from a plurality of sources, comprising the steps of:

acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command;

prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed parameters and settings; and

initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings.

13. (Original) The method of claim 12, wherein the attribute is a different color.

14. (Cancelled)

15. (Previously Presented) The method of claim 12 wherein the step of initiating generation, initiates generating of data representing a window for displaying said ordered ventilator parameters and settings.

16. (Original) The method of claim 15 wherein the generating step is done by an internet browser.

17. (Previously Presented) The method of claim 15 wherein the generating step displays the ventilator parameters and settings so that the changed ventilator parameters and changed ventilator settings are displayed in the different color.

18. (Previously Presented) The method of claim 12 further comprising the step of acquiring another set of new ventilation unit parameters and settings, in response to the user command.

19. (Previously Presented) The method of claim 12 wherein the step of prioritizing the received ventilation unit parameters and settings for display in a desired order is in response to a second user command.

20. (Original) The method of claim 19 wherein the second user command comprising selection of a filtered list.

21. (Previously Presented) The method of claim 19 wherein the second user command comprises creation of values for selected parameter and settings.

22. (Original) The method of claim 12 further comprising the step of selecting any one of a plurality of sources.

23. (Withdrawn) A method for acquiring and storing ventilator data comprising ventilator parameters and ventilator settings from a medical device over a communication network, comprising the steps of:

establishing communication with the medical device over communication network;  
acquiring selected ventilator data from the medical device over the communication network;

determining if a value of at least one of: 1) ventilator settings and 2) ventilator parameters of acquired ventilator data has changed; and



only if the value has changed, storing the acquired ventilator data.

24. (Withdrawn) The method of claim 23, wherein if the selected ventilator data are acquired in response to a user request, automatically storing the acquired ventilator data, without the determining step.

25. (Withdrawn) The method of claim 23 further comprising the step of allocating an attribute to distinguish any changed ventilator data from previously acquired ventilator data.

26. (Withdrawn) The method of claim 23 further comprising the step of determining if the value has changed more than a predetermined threshold.

27. (Withdrawn) A method for acquiring and storing ventilator data comprising ventilator parameters and ventilator settings from a medical device over a communication network, comprising the steps of:

establishing communication with the medical device over the communication network;  
acquiring selected ventilator data periodically from the medical device over the communication network;

determining whether a value of ventilator settings of acquired ventilator data has changed; and

only if the value has changed, storing the acquired ventilator data.